

**RECEIVED  
CENTRAL FAX CENTER****MAY 23 2007****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

First Named Applicant:	)	Art Unit: 2188
	)	
Serial No.: 10/764,946	)	Examiner: Doan
	)	
Filed: January 26, 2004	)	HSJ920030237US1
	)	
For: <b>SYSTEM AND METHOD FOR SELECTING</b>	)	May 23, 2007
<b>COMMAND FOR EXECUTION IN HDD BASED</b>	)	750 B STREET, Suite 3120
<b>ON BENEFIT</b>	)	San Diego, CA 92101
	)	

**REQUEST FOR REHEARING UNDER APPELLATE RULE 52**

Commissioner of Patents and Trademarks

Dear Sir:

Appellant requests a rehearing for two reasons. The "statement of the case" in the Board decision dated May 21, 2007 is wrong. Only Claims 1 and 5 were rejected and subject to appeal, all other claims having been allowed or indicated as being allowable as agreed to by both Appellant and the examiner (see, e.g., page 2 of the Examiner's Answer dated October 19, 2006).

Second, the decision states (page 4, paragraph 10 and page 5, lines 16-21) as the sole reason for affirmance that Appellant was "silent with respect to whether Clegg teaches an optimized operation rate benefit", but the record indicates otherwise. The portion of Clegg relied on for this claim element is col. 2, line 67 - col. 3, line 4, see Examiner's Answer dated October 19, 2006, page 7, part "B". At the bottom of page 4 of the Appeal Brief dated June 26, 2006 Appellant asserts that the parallels drawn by the examiner between Appellant's own specification and Clegg et al., col. 2, line 55 to col. 3 (the very portion relied on for the optimized operation rate benefit element) was done "only by a leap of logic". Thus, Appellant plainly took


1199-17,KZH

CASE NO.: HSJ920030237US1  
Serial No.: 10/764,946  
May 23, 2007  
Page 2

PATENT  
Filed: January 26, 2004

issue with how the examiner interpreted the portion of Clegg relied on for the optimized operation rate benefit element. Accordingly, Appellant respectfully requests that the Board review the case on the merits.

Respectfully submitted,

  
\_\_\_\_\_  
John L. Rogitz  
Registration No. 33,549  
Attorney of Record  
750 B Street, Suite 3120  
San Diego, CA 92101  
Telephone: (619) 338-8075

JLR:jg

1189-17.R2H